



PUBLIC NOTICE

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DA 02-3538

Released: December 20, 2002

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF GENUITY TELECOM INC. BY LEVEL 3 COMMUNICATIONS, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 02-385

On December 16, 2002, Genuity Telecom Inc. ("Telecom"), a wholly-owned subsidiary of Genuity Inc. ("Genuity"), and Level 3 Communications, LLC ("Level 3," collectively, "Applicants"), filed an application pursuant to section 63.04 of the Commission's rules,¹ for consent to the acquisition of substantially all of Telecom's telecommunications carrier assets by Level 3, including: (1) Telecom's U.S. customer base for domestic telecommunications services; (2) and Telecom's domestic common carrier transmission lines.² On November 27, 2002, to facilitate the transaction, Genuity and Telecom (along with certain other Genuity subsidiaries) filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code and entered debtor-in-possession status.³

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(ii) of the Commission's rules because the transferee, Level 3, would have a market share in the interstate, interexchange market of less than 10 percent; Level 3 would provide competitive telephone exchange services or exchange access services exclusively in areas served by a dominant local exchange carrier (LEC) that is not a party to the transaction; and the applicants are a dominant carrier and a non-dominant carrier that provides services

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

² Applicants have also filed applications to transfer Telecom's international section 214 authorization to provide global facilities-based and global resale services, as well as applications to transfer one Industrial/Business Pool, Conventional license, and – from Genuity Solutions, Inc. ("Solutions"), another Genuity subsidiary – two Microwave Industrial/Business Pool licenses. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

³ On November 27, 2002, Genuity notified the Commission in a *proforma* filing that both Genuity and Telecom entered debtor-in-possession status as a result of their bankruptcy filings on November 21, 2002. *See* 41 C.F.R. § 63.03(d).

exclusively outside the geographic area where the dominant carrier is **dominant**.⁴

Telecom, a Delaware corporation, is a wholly-owned subsidiary of Genuity. Telecom is an interexchange carrier that provides private line and other interstate services throughout the United States. Genuity, also a Delaware corporation, is headquartered in Woburn, Massachusetts. Genuity provides enterprise IP networking services, combining its Tier 1 network with a full portfolio of managed Internet services. Applicants state that less than 10 percent of Genuity's revenues are derived from Telecom, which is Genuity's only provider of telecommunications services in the United States.

Level 3, a Delaware limited liability company, is headquartered in Broomfield, Colorado, and is engaged in the provision of domestic and international communications and information services. Level 3 is an indirect, wholly-owned subsidiary of Level 3 Communications, Inc., a global communications and information services company that offers a wide range of communications services over its 20,000 mile broadband fiber optic network, including Internet Protocol (IP) services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Communications, Inc., also holds a noncontrolling, 10-percent-or-greater indirect interest in Commonwealth, an incumbent LEC in Pennsylvania.

On November 27, 2002, Genuity, certain Genuity subsidiaries (including Telecom), Level 3 Communications, Inc., and Level 3 entered into an Asset Purchase Agreement ("Agreement") to allow Level 3 to acquire substantially all of Genuity's assets, including Telecom's U.S. customer base for domestic and international telecommunications services, Telecom's international Section 214 authorization for global-facilities-based and global resale services, and Telecom's domestic common carrier transmission lines. Under the terms of the Agreement, Level 3 will provide service to Genuity's existing customers, and will operate the Genuity facilities transferred to Level 3, ensuring a seamless transition for Genuity's customers. To the extent that Telecom does not transfer to Level 3 at closing all of its existing common carrier customers, Applicants state that Telecom will continue to provide service to those customers, if any, pending the filing and FCC approval of subsequent section 214 discontinuance applications for domestic and international services.'

Applicants state that the proposed transaction will have no impact on markets for local exchange and exchange access services because neither of the Genuity subsidiaries – Telecom or Solutions – provides any exchange access services, nor is either certificated to provide local exchange service in any state. Furthermore, Applicants state that both Telecom and Level 3 are

⁴ Level 3 has an attributable interest in Commonwealth Telephone Enterprises, Inc. ("Commonwealth"), an incumbent LEC in Pennsylvania. On December 20, 2002, Applicants supplemented their application in this docket to indicate that Telecom does not provide any common carrier telecommunications services within Commonwealth's service area.

⁵ Telecom will also retain responsibility for any other common carrier assets (including facilities) not transferred to Level 3, pending appropriate disposition through the Bankruptcy Court.

insignificant participants in the market for interexchange services.⁶ They state that in 2001, Telecom's interexchange revenues, generated primarily in the highly competitive private line service sector, were less than \$100 million. Level 3's interexchange revenues in 2001 were slightly over \$160 million. The combined interexchange revenues of Level 3 and Telecom thus represent less than one-third of one percent of total interexchange revenues.

Applicants also state the proposed transaction will yield affirmative public interest benefits, ensuring a seamless transition of Telecom's subscriber base to another provider without service interruption, which otherwise will not be assured. Moreover, Applicants state that timely Commission consent to this transaction will be necessary for the Bankruptcy Court to be able to maximize the amounts received by Genuity's creditors. Finally, Applicants state that Level 3's acquisition of Genuity's assets will strengthen and expand Level 3's customer service offering and networks, and the acquisition will allow Level 3 to compete more effectively.

GENERAL INFORMATION

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.' Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice.' Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

⁶ Solutions is not a common carrier.

⁷ **See** 47 C.F.R. § 63.03(a)

⁸ **Such** authorization is conditioned upon receipt of any other necessary approvals from **the** Commission in connection with the proposed transaction,

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. **U.S.**Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (4) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: ielis@fcc.gov; and
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: nioshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394 or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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